

Application No. 09/593,591
Reply dated October 16, 2007
Reply to Office Action of July 16, 2007

perpendicular to and bisecting the length of the implant along the mid-longitudinal axis would pass through the opening (130) such that the area of the opening between the bisecting plane and the leading end of the implant would be equal to the area of the opening between the bisecting plane and the trailing end of the implant. Coates does not teach or suggest an implant having "a majority of said opening being between said leading end of said body and a plane perpendicular to and bisecting the length of said body along the mid-longitudinal axis" as recited in independent claims 1, 85, 163, 203, 223, and 263. Applicant submits that the rejection under 35 U.S.C. § 102(b) over Coates cannot be sustained since Coates does not disclose all of the recitations of independent claims 1, 85, 163, 203, 223, and 263.

Boyle teaches an implant having an opening (26) between the leading and the trailing ends. (See Boyle, FIGS. 10, 11, 12.) In Boyle, a plane perpendicular to and bisecting the length of the implant along the mid-longitudinal axis would pass through the opening (26) such that the area of the opening between the bisecting plane and the leading end of the implant would be equal to the area of the opening between the bisecting plane and the trailing end of the implant. Boyle does not teach or suggest an implant having "a majority of said opening being between said leading end of said body and a plane perpendicular to and bisecting the length of said body along the mid-longitudinal axis" as recited in independent claims 1, 85, 163, 203, 223, and 263. Applicant submits that even if the Fig. 19 embodiment of Boyle were modified to include non-arcuate upper and lower surfaces, the modified embodiment would not disclose or suggest all of the recitations of independent claims 1, 85, 163, 203, 223, and 263.

The advantages of an opening as recited in Applicant's independent claims were set forth on page 35, lines 13-21 of the Amendment dated June 6, 2007, incorporated by reference herein.

The Examiner rejected claims 26-29, 110-113, 149-152, 159-162, 172, 177, 178, 182, 212, 217, 218, 222, 232, 237, 238, 242, 272, 277, 278, and 282 under 35 U.S.C. § 103(a) as being unpatentable over Boyle, further in view of U.S. Patent No. 5,397,364 to Kozak et al. ("Kozak"). The Examiner also rejected claims 36-42, 120-126, 166, 168-170, 173, 181, 206, 221, 241, and 281 under 35 U.S.C. § 103(a) as being unpatentable over Boyle. The Examiner further rejected claims 23, 24, 107, 108, 176, 216, 236, and

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276 under 35 U.S.C. § 103(a) as being unpatentable over Boyle in view of U.S. Patent No. 5,669,909 to Zdeblick et al. ("Zdeblick"). Applicant submits that the rejections of claims 23, 24, 26-29, 36-42, 107, 108, 110-113, 120-126, 149-152, 159-162, 166, 168-170, 172, 173, 176-178, 181, 182, 206, 212, 216-218, 221, 222, 232, 236-238, 241, 242, 272, 276-278, 281, and 282 are rendered moot at least because these claims depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits that independent claims 1, 85, 163, 203, 223, and 263 are patentable and that dependent claims 2, 4, 5, 7-20, 22-30, 32-42, 86, 88, 89, 91-129, 148-152, 155-162, 164, 166, 168-182, 204, 206, 208-222, 224, 226, 228-242, 256, 264, 266, and 268-282, dependent from one of independent claims 1, 85, 163, 203, 223 and 263, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

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By: 

Amedeo F. Ferraro
Registration No. 37,129

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (310) 286-9800
Facsimile: (310) 286-2795